

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 16785 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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RAMESHCHANDRA VASANTLAL BHOJANI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,
Mr Apurva A Dave, AGP for Respondent(s) : 1 to 3,
MR M.IQBAL A SHAIKH, Central Govt.Counsel for
Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 22/11/2007

ORAL JUDGMENT

1. By way of this Special Civil Application under
Article 226 of the Constitution of India, the present

petitioner has challenged the order of detention dated 15.6.2007 (Annexure 'A'), passed by the District Magistrate, Rajkot, in exercise of powers conferred under sub-section (2) of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short, 'the Act') with a view to prevent the petitioner from black marketing essential commodities like kerosene and acting in any manner prejudicial to the maintenance of supplies of essential commodities essential to the community.

2. The petitioner-detenu is residing in Rajkot and he is a licence-holder and running a kerosene distribution shop in Rajkot under the Essential Commodities Act, 1981 in the name "Bhavani Petroleum". It is alleged that on 6.4.2007, the Supply Officer, Rajkot raided the shop of the petitioner. During the raid, it was found that the present petitioner was selling blue kerosene in open market at a higher price than the market price and thus for personal gains and economic profit, the detenu had committed illegality and indulged in prejudicial activities to the maintenance of supplies of essential commodities, though it was required to be sold to cardholders only. After a thorough checking of the said firm and after recording the

statements of the concerned persons/witnesses, the petitioner's firm was found to be indulging in black marketing. A Criminal case was lodged against him and he was released on bail by the court. The grounds of detention are annexed at Annexure 'B' to the petition.

Heard learned advocate for the petitioner, the learned Standing Counsel for the Union of India and the learned AGP for the State.

3. Challenging the order of detention, Mr H.R.Prajapati, learned advocate contended that the petitioner-detenu made representation dated 20.6.2007 against the impugned detention order through his advocate, which is produced at Annexure 'C' to the petition. In that representation, inter alia, the detaining authority was requested to forward the copy of the said representation to the higher authorities competent to release the detenu as mentioned in the grounds of detention however, the said representation has not been forwarded by the District Magistrate to the concerned authorities for their consideration and hence the impugned order of detention is liable to be quashed and set aside. In support of his argument, Mr Prajapati has relied on (1) judgment of the Hon'ble Apex Court in *Amir*

Shad Khan v. L. Hmingliana (AIR 1991 SC 1983) and (2) judgment of this Court dated 28.7.1993 delivered in Special Civil Application No.765 & 766 of 1993.

4. It is submitted by Mr M.A. Shaikh, learned Central Government Standing Counsel appearing for the Union of India that they have not received any representation from the District Magistrate or through the advocate of the detenu. Therefore, the question of considering the representation by the Central Government does not arise.

5. Mr Apurva A. Dave, learned AGP, however, very strenuously contended that as the representation in question has been drafted and forwarded by Mr Prajapati, advocate of the detenu, who is well-versed in detention laws, it was not obligatory for the detaining authority to forward the copy of the representation to the Central Government. It is admitted by him that the representation was forwarded to the State Government and not to the Central Government. It is argued by Mr Dave that the petitioner-detenu could also send his representation to the competent authority but he has failed to do so and now he cannot take the plea that duty is cast upon the

petitioner to send representation to the concerned authority. Therefore, also the detenu is not entitled to get any relief. In this case, the representation was not forwarded by the detaining authority to the Central Government. To that extent, the detenu has not been afforded the opportunity of making representation to the Central Government against his detention. In para 10, it has been held by the Apex Court in **Amir Shad Khan's** case (supra) that,

“It must be realised that when a person is placed under detention he has certain handicaps and if he makes a request that a representation prepared by him may be forwarded to the Central Government as well as the State Government for consideration after taking out copies thereof it would be a denial of his right to represent to the Central Government if the Detaining Authority as well as the State Government refuse to accede to his request and omit to forward his representation to the Central Government for consideration. It is difficult to understand why such a technical and rigid view should be taken by the concerned authorities in matters of personal liberty where a person is kept in preventive detention without trial. Detenus may be literate or illiterate, they may have access to legal advice or otherwise, they may or may not be in a position to prepare more than one copy of the representation and if they make a request to

the authorities which have the facilities to take out copies to do so and forward them for consideration to the Central Government would it be just and fair to refuse to do so? In such circumstances refusal to accede to their request would be wholly unreasonable and in total disregard of the right conferred on the detenu by Article 22 (5) of the Constitution read with section 11 of the Act. We are, therefore, of the opinion that the Detaining Authority as well as the State Government were not justified in taking a hyper-technical stand that they were under no obligation to take out copies of the representation and forward them to Central Government. We think that this approach on the part of the Detaining Authority and the State Government has robbed the appellants of their constitutional right under Article 22 (5) read with Section 11 of the Act to have their representation considered by the Central Government. The request of the detenus was not unreasonable. On the contrary the action of the Detaining Authority and the State Government was unreasonable and resulted in a denial of the appellants' constitutional right. The impugned detention orders are, therefore, liable to be quashed."

4.1. Taking into consideration the ratio laid down by the Hon'ble Supreme Court, duty is cast on the District Magistrate to send the representation to the competent authority for its consideration. However, he

has failed to do so. There is therefore, no force in the argument advanced by Mr Dave that as the learned advocate who is well versed in detention laws has drafted the representation, it was not obligatory that the Detaining Authority to forward copy of the representation to the Central Government. Similarly, in the judgment of this court in Special Civil Application No.765 with 766 of 1993 decided on 28.7.1993 wherein also it was held that merely because the detenu has been assisted by an advocate, that does not absolve the detaining authority from its duty to forward the detenu's representation to all the authorities who have a right to consider the representation.

5. It is an admitted fact that the detenu has made representation dated 20.6.2007 through his advocate for forwarding it to the Central Government as well as State Government. In spite of that the said representation was not forwarded to the Central Government for its consideration and so also the order of detention dated 15.6.2007 passed by the District Magistrate, Rajkot which is produced at Annexure 'A', is liable to be quashed and set aside. Obviously, therefore, there is breach of the mandate contained in Article 22 (5) of the Constitution, and on that ground alone the

petition should succeed. Consequently, the impugned order of detention is liable to be quashed and set aside.

6. In the result, this Special Civil Application is **allowed**. The order of detention dated 15.6.2007 passed by the District Magistrate, Rajkot is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

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